

Hearing Officer Richard H. Cummings was assigned to the case and a hearing was held in Berlin in the offices of the Employment Security on June 22, 1979.

The hearing officer accepted the "Motion for Dismissal" as untimely as filed by the City, however, did not rule on the motion and proceeded to hear the merits of the case.

The Union narrowed the issue to one only, the computation remedy and the awarding of back pay to Mr. Migetz retroactive to July 27, 1977. The City stated the Union couldn't get clarification of the arbitrator's award and the City interpreted the award to say the grievant owed the City \$940.08 representing the excess in wages earned by the sergeant over that of the incumbent captain. The Union on the other hand, contended that the City owed the grievant approximately \$1,200 in back wages.

Attorney for the Union under date of December 18, 1978 requested a clarification of the award from arbitrator Dorr and was informed by Mr. Dorr that his authority ceases with the issuance of the Award except when (1) as a part of the Award the Arbitrator has retained limited jurisdiction pending satisfaction of stated conditions, or (2) his authority is extended by mutual consent of the parties. The City refused to join in the request, therefore the arbitrator was not permitted to issue a clarification. AAA rules clearly defines that "the power of the arbitrator ends with the making of the award. An award may not be changed by the arbitrator, once it is made, unless the parties mutually agree to reopen the proceeding and to restore the power of the arbitrator."

At the conclusion of the hearing, Hearing Officer Cummings informed the parties that they were entitled to a full hearing of the Board (PELRB), wishing to avail themselves of the opportunity, a hearing date was set for July 18, 1979 in Berlin. The Commission was ordered to furnish PELRB with copies of the wages for the period involved for both the complainant, Mr. Migetz, and the Captain, Mr. Martin.

Hearing was conducted in Berlin by PELRB on July 18, 1979 with Chairman Edward J. Haseltine, presiding and Members Cummings and Mayhew present. Also in attendance was the Clerk of the Board, Mrs. LeBrun.

PELRB heard testimony from all the parties involved and accepted several exhibits to substantiate the individual positions.

FINDINGS OF FACT

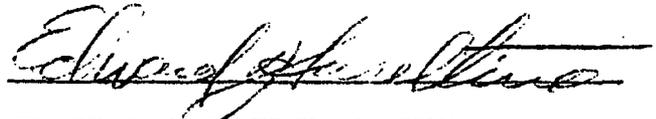
1. The parties properly presented the matter to arbitration in accordance with Step 4 of the Grievance Procedure under the existing agreement by and between the parties.
2. The arbitrator's award stated that "The Grievant shall be made whole by appointing him within 45 days of this Award to the Captain vacancy on the trial basis provided by contract, and by payment to him retroactively what he would have earned had he received the appointment to Captain on July 27, 1977, less his earnings for the same period as Sergeant"

3. The Grievant was appointed within the required 45 days to the Captain's position.
4. The grievant's earnings during the period in question were more as a sergeant than they would have been had he been promoted and worked as a captain.

DECISION AND ORDER

After careful review of all the evidence and testimony presented at the original hearing and the full hearing, the Board finds as follows:

- A. The Grievant was made whole upon his appointment as captain, as ordered in the arbitrator's award.
- B. The question of retroactivity is irrelevant as the position of captain is managerial and salaried.
- C. The unfair labor practice complaint is dismissed.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 18th day of December, 1979.

By unanimous vote of the Board, Chairman Haseltine presiding. Members present and voting, Cummings and Mayhew. Also present, Executive Director E. LeBrun.